

2050 Record Keeping Requirements

- 2051 The providers shall maintain all such for at least five years from the date of filing, or the date upon which the fiscal and statistical records were to be filed, whichever is later. The Division of Audit shall keep all cost reports, supporting documentation submitted by the provider, correspondence, workpapers and other analysis supporting audits for a period of three years. In the event of litigation or appeal involving rates established under these regulations, the provider and Division of Audit shall retain all records which are in any way related to such legal proceeding until the proceeding has terminated and any applicable appeal period has lapsed.
- 2052 These records of the provider shall include, but not be limited to, matters of provider ownership, organization, operation, fiscal and other record keeping systems, federal and state income tax information, asset acquisition, lease, sale, or other action, franchise or management arrangement, patient service charge schedule, matters pertaining to cost of operation, amounts of income received by service and purpose and flow of funds and working capital.
- 2053 When the Department of Human Services determines that a provider is not maintaining records as outlined above for the determination of reasonable cost under the program, the Department, upon determination of just cause, shall send a written notice to the provider of its intent to reduce payments to a 90% level of reimbursement in 30 days together with an explanation of the deficiencies. Payments shall remain reduced until the Department is assured that adequate records are maintained, at which time reimbursement will be reinstated at the full rate from that time forward. If upon appeal, the provider documents that there was not just cause for the reduction in payment, all withheld amounts will be restored to the provider.
- 2054 Providers shall make such records available to representatives of the State of Maine Department of Human Services or the U.S. Department of Health, and Human Services.
- 2055 Overpayments found in audits will be accounted for on the OA-41 no later than the second quarter following the quarter in which the overpayment was found to be valid.

3000 ROUTINE SERVICE - CAPITAL COSTS

The "capital cost per diem rate" is determined from the sum of the following costs:

Depreciation on buildings and fixed equipment and land improvements, and amortization of leasehold improvements.

Interest on long term debts. (Real Estate only)

Real Estate Taxes and Fire Insurance Premiums.

Return on equity capital for proprietary providers.

In cases where facilities are rented, that portion of the rent attributable to the above items will be substituted and included as a capital cost.

All capital costs for boarding care portions of the facility are to be paid in addition to any ceiling established on routine service costs. Ceilings on boarding care costs will apply to routine service costs only and will not effect the actual capital costs.

3010 Depreciation. Allowance for depreciation Based on Asset Costs.

3011 Principle. An appropriate allowance for depreciation on buildings and equipment is an allowable cost. The depreciation must be:

3011.1 Identified and recorded in the provider's accounting records.

3011.2 Based on historical cost and prorated over the estimated useful life of the asset using the straight-line method

3011.21 The total historical costs of a building as constructed or purchased becomes the basis for the straight line depreciation method. Component depreciation is not allowed except on those items listed below with their minimum useful lives:

Electronic Components	20 year life
Plumbing and Heating Components	25 year life
Central Air Conditioning Unit	15 year life
Elevator	20 year life
Escalator	20 year life
Central Vacuum Cleaning System	15 year life
Generator	20 year life

3011.22 Any provider using the component depreciation that has been audited and accepted for cost reporting purposes prior to April 1, 1980, will be allowed to continue using this depreciation mechanism.

3011.3 Where an asset that has been used or depreciated under the program is donated to a provider, or where a provider acquires such assets through testate or intestate distribution (e.g., a widow inherits a skilled nursing facility upon the death of her husband and becomes a newly certified provider), the basis of depreciation for the asset is the lesser of the fair market value, or the net book value of the asset in the hands of the owner last participating in the program. The basis for depreciation shall be determined as of the date of donation or the date of death, whichever is applicable.

3011.4 Depreciation on all property other than buildings, fixed equipment, land improvements, and amortization of leasehold improvements is an allowable cost subject to cost finding under Section 4000-Routine Services - Other Allowable Costs.

3011.5 Special Reimbursement Provisions for Energy Efficient Improvements

For the Energy Efficient Improvements listed below which are made to existing facilities on or after September 1, 1981, reimbursement will be allowed based on the length of the loan received with the limitations listed below:

CAPITAL EXPENDITURE

Up to \$5,000.00	Minimum depreciable period 3 years
From \$5,001.00 to \$10,000.00	Minimum depreciable period 5 years
\$10,001.00 and over	Minimum depreciable period 7 years

The above limitations are minima and if a loan is obtained for a period time in excess of these minima the depreciable period then becomes the length of the loan provided that, in no case shall the depreciable period exceed the useful life as spelled out in the Chart of Accounts published by the American Hospital Association.

The reimbursement for the Energy Efficient Improvements that are 100% financed will consist of reimbursement of the principal and interest payments, based on the length of the loan or the above listed minima. If no loans are obtained, then the depreciable lives will be based on the above minima. If only partially financed, then the interest and the principal payments will be reimbursed with the additional amounts. reimbursed on a depreciable basis limited to the minima lives as spelled out above.

If the total expenditure exceeds \$25,000.00, then prior approval for such an expenditure must be received in writing from the Department. A request for prior approval will be evaluated by the Department on the basis of whether such a large expenditure would decrease the actual energy costs to such an extent as to render this expenditure reasonable. The age and condition of the facility requesting approval will also be considered in determining whether or not such an expenditure would be approvable.

The reasonable Energy Efficient Improvements are listed below:

1. Insulation (fiberglass, cellulose, etc.)
2. Energy Efficient Windows or Doors for the outside of the facility including insulating shades and shutters.

3. Caulking or weather stripping for windows or doors for the outside of the facility.
4. Fans specially designed for circulation of heat inside the building.
5. Wood and Coal burning furnaces or boilers (not fireplaces).
6. Furnace Replacement burners that reduce the amount of fuel used.
7. Enetrol or other devices connected to furnaces to control heat usage.
8. A Device or Capital Expenditures for modifying an existing furnace that reduces the consumption of fuel.
9. Solar active systems for water and space heating.
10. Retrofitting structures for the purpose of creating or enhancing passive solar gain, if prior approved by the Department regardless of amount of expenditure. A request for prior approval will be evaluated by the Department on the basis of whether energy costs would be decreased to such an extent as to render the expenditure reasonable. The age and condition of the facility requesting approval will also be considered.
11. Any other energy saving devices that might qualify as Energy Efficient other than those listed above must be prior approved by the Department for this Special Reimbursement provision. A request for prior approval will be evaluated to determine that the energy savings device is a reliable product and would decrease the energy costs of the facility making the expenditure reasonable in nature.

In the event of a sale of the facility the principal payments as listed above will be recaptured in lieu of depreciation.

3012 Definitions

3012.1 Historical cost. Historical cost is the cost incurred by the present owner in acquiring the asset. The historical cost shall not exceed the lower of:

3012.11 current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase;

3012.12 fair market value at the time of the purchase;

3012.13 the allowable historical cost of the first owner of record on or after July 18, 1984.

3013 Recording of depreciation. Appropriate recording of depreciation encompasses the identification of the depreciable assets in use, the assets historical costs, the method of depreciation, estimated useful lives, and the assets accumulated depreciation. The Chart of Accounts published by the American Hospital Association and publications of the Internal Revenue Service are to be used as a guide for the estimation of the useful life of assets.

3013.1 For new buildings constructed after April 1, 1980 the minimum useful life to be assigned is listed below:

Wood Frame, Wood Exterior	30 years
Wood Frame, Masonry Exterior	35 years
Steel Frame, or Reinforced Concrete Masonry Exterior	40 years

If a mortgage obtained on the property exceeds the minimum life as listed above, then the terms of the mortgage will be used as the minimum useful life.

3014 Depreciation method. Proration of the cost of an asset over its useful life is allowed on the straight-line method.

3015 Although funding of depreciation is not required, it is strongly recommended that providers use this mechanism as a means of conserving funds for replacement of depreciable assets, and coordinate their planning of capital expenditures with areawide planning activities of community and state agencies. As an incentive for funding, investment income on funded depreciation will not be treated as a reduction of allowable interest expense.

3015.1 Replacement reserves. Some lending institutions require funds to be set aside periodically for replacement of fixed assets. The periodic amounts set aside for this purpose are not allowable costs in the period expended, but will be allowed when withdrawn and utilized either through depreciation or expense after considering the usage of these funds. Since the replacement reserves are essentially the same as funded depreciation the same regulations regarding interest and equity will apply.

3015.2 If a facility is leased from an unrelated party and the ownership of the reserve rests with the lessor, then the replacement reserve payment becomes part of the lease payment and is considered an allowable cost in the year extended. If for any reason the lessee is allowed to use this replacement reserve for

the replacement of the lessee's assets then during that year the allowable lessee will be allowed to depreciate the assets purchased in this situation.

3015.3 If a rebate of a replacement reserve is returned to the lessee for any reason it will be treated as a reduction of the allowable lease expense in the year reviewed.

3016 Gains and losses on disposal of assets. Gains and losses realized from the disposal of depreciable assets are to be included in the determination of allowable costs. The extent to which such gains and losses are includable is calculated on a proration basis recognizing the amount of depreciation charged or assumed in a period prior to the provider's participation in the program when the sale takes place within one year after termination.

The recapture will be made in cash from the seller. During the first eight years of operation, all depreciation allowed on buildings and fixed equipment by the Department will be recaptured from the seller in cash at the time of the sale. From the 9th to the 15th year, all but 3% per year will be recaptured, and from the 16th to the 25th year, all 8% per year will be recaptured not to exceed 100%. Accumulated depreciation is recapturable to the extent of the gain on the sale.

3017 Limitation on the participation of capital expenditures. Depreciation is not allowable with respect to any capital expenditure in plant, property, and equipment related to resident care, which has not been submitted to the designated planning agency as required, or has been determined to be inconsistent with health facility planning requirements, or as deemed necessary by the Bureau of Mental Retardation.

3020 Purchase, Rental, Donation, and Lease of capital Assets

3021 Purchase of facilities from related individuals and/or organizations

3021.1 Where a facility is purchased from an individual or organization related to the purchaser by common control and/or ownership; or

3021.2 Where a facility is purchased after April 1, 1980 by an individual related to the seller as

3021.21 a child,

3021.22 a grandchild,

3021.23 a brother or sister

3021.24 a spouse of a child, grandchild, or brother or sister, or

3021.25 an entity controlled by a child, grandchild, brother, sister or spouse of child, grandchild or combination brother or sister thereof; or

- 3021.3 Where a facility, through purchase, converts from a proprietary to a nonprofit status and the buyer and seller are entities related by common control and/or ownership; then the purchaser's basis for depreciation shall not exceed the seller's basis under the program, less accumulated depreciation recognized under the program. Also, accumulated depreciation of the seller under the program shall be considered as incurred by the purchaser for purposes of computing gains and applying the depreciation recapture rules (Principle 3016) to subsequent sales by the buyer. There will be no recapture of depreciation from the seller on a sale between stipulated related parties since no step-up in the basis of depreciable assets is permitted to the buyer.
- 3021.4 One-time exception to section 3021.2. At the election of the seller, section 3021.3 will not apply to a sale made to a buyer defined in section 3021.2 if
- 3021.41 the seller is an individual or any entity owned or controlled by an individual or related individuals who were selling assets to a "related party" as defined in section 3021.1 or 3021.2
- 3021.42 the seller has attained the age of 55 before the date of such sale or exchange; and
- 3021.43 during the twenty-year period ending on the day of the sale, the seller has owned and operated the facility for periods aggregating ten years or more; or
- 3021.44 the seller has inherited the facility as property of a deceased spouse to satisfy the holding requirements under section 3021.43
- 3021.45 if the seller makes a valid election to be exempted from the application of 3021.3 the allowable basis of depreciable assets for reimbursement of interest and depreciation expense to the buyer will be determined in accordance with Principle 3012 as though the parties were not related.
- 3021.5 The one time exception to section 3021.2 applies to individual owners and not to each facility. If an individual owns more than one facility he must make the election as to which facility he wishes to apply this exception to.
- 3021.6 Limitation in the application of section 3021.4
- 3021.61 Section 3021.4 shall not apply to any sale or exchange by the seller if an election by the seller under section 3021.4 with respect to any other sale or exchange has taken place.

3021.62 Section 3021.4 shall not apply to any sale or exchange by the seller unless the seller

3021.621 immediately after the sale has no interest in the nursing home (including an interest as officer, director, manager, or employee) other than as a creditor, and

3021.622 does not acquire any such interest within 10 years after the sale of this or any other facility and

3021.623 agrees to file an agreement with the Department of Human Services to notify the Department that any acquisition as defined by the section 3021.522 has occurred.

If section 3021.62 is satisfied, section 3021.1 and section 3021.3 will also be satisfied.

If the seller acquires any interest defined by section 3021.622, then pursuant to the agreement the basis will revert to what the seller's basis would be if the seller had continued to own the facility, the amounts paid by the Title XIX program for depreciation, interest and return of owner's equity from the increase in basis will be immediately recaptured, and an interest rate of nine percent per annum on recaptured monies will be paid to the Department for sellers' use of the Title XIX monies. A credit against this, of the original amount of depreciation recapture from the seller will be allowed with any remaining amount of the original depreciation recapture becoming the property of the Department.

3022 Basis of assets used under the program and donated to a provider. Where an asset that has been used or depreciated under the program is donated to a provider, the basis of depreciation for the asset shall be the lesser of the fair market value or the net book value of the asset in the hands of the owner last participating in the program. The net book value of the asset is defined as the depreciable basis used under the program by the asset's last participating owner less the depreciation recognized under the program.

3023 Allowances for depreciation on assets financed with Federal or Public Funds. Depreciation is allowed on assets financed with Hill Burton or other Federal or Public Funds.

LEASES AND OPERATIONS OF LIMITED PARTNERSHIPS

3024 Leases

3024.1 Information and Agreements Required for Leases.

If a provider wishes to have costs associated with leases included in reimbursement:

3024.11 A copy of the signed lease agreement is required.

3024.12 An annual copy of the federal income tax return of the lessee will be made available to representatives of the State of Maine Department of Human Services or the U.S. Department of Health and Human Services in accordance with section 2050.

3024.13 If the lease is for the use of a building and/or fixed equipment, the articles and bylaws of the corporation, trust indenture, partnership agreement, or limited partnership agreement of the lessor is required.

3024.3 Lease Arrangement Between Individuals or Organizations Not Related by Common Control or Ownership.

The allowable cost between two unrelated organizations is the lesser of:

3024.31 The actual costs calculated under the assumption that the lessee and the lessor are related parties; or

3024.32 The actual lease payments made by the lessee to the lessor.

If the cost as defined in section 3024.32 are less than the costs as defined in section 3024.31, then the difference can be deferred to a subsequent fiscal period. If in a later fiscal period, costs as defined in section 3024.32 exceed costs as defined in section 3024.31, the deferred costs may begin to be amortized. Amortization will increase allowable costs up to the level of the actual lease payments for any given year. These deferred costs are not assets of the provider for purposes of calculating allowable costs of interest or return of owners' equity, and except as specified, do not represent assets that a provider or creditor of a provider may claim is a monetary obligation from the Title XIX program.

3025 Sale and Leaseback Agreements and Rental Charges. Rental costs specified in sale and leaseback agreements incurred by providers through selling physical plant facilities or equipment to a purchaser not connected with or related to the provider, and concurrently leasing back the same facilities or equipment, are includable in allowable cost if these conditions are met:

3025.1 The rental charges are reasonable based on consideration of rental charges or comparable facilities and market conditions in

the area, the type, expected life, condition and value of the facilities or equipment rented and other provisions of the rental agreements;

3025.2 Adequate alternate facilities or equipment which would serve the purposes are not or were not available at lower cost;

3025.3 The leasing was based on economic and technical consideration. If all these conditions are not met, the rental charge cannot exceed the amount which the provider would have included in reimbursable costs, had he retained legal title to the facilities or equipment, such as interest on mortgage, taxes, depreciation, insurance and maintenance costs.

3030 Interest Expense

3031 Principle. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

3032 Definitions

3032.1 Interest. Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term, usually one (1) year or less, but in no event more than fifteen (15) months. This is usually for such purposes as working capital for normal operating expenses. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes, such as acquisition of facilities and equipment, and capital improvements. Generally, loans for capital purposes are long-term loans. Except as provided in subsection 3036, interest does not include interest and penalties charged for failure to pay accounts when due.

3032.2 Necessary. Necessary requires that the interest:

3032.21 Be incurred on a loan made to satisfy a financial need of the provider. Loans which result in excess funds or investments would not be considered necessary.

3032.22 Be reduced by investment income except where such income is from gifts and grants, whether restricted or unrestricted, and which are held separate and not comingled with other funds. Income from funded depreciation is not used to reduce interest expense.

3032.3 Proper. Proper requires that interest:

3032.31 Be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made.